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**UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,)	CR 05-00789 JW
)	
Plaintiff,)	
)	SENTENCING
vs.)	MEMORANDUM
)	
ANTHONY SCOTT CLARK,)	Date: Jan. 28, 2008
)	Judge: Ware
Defendant.)	Time: 1:30 p.m.

Introduction

Anthony Scott Clark, through his attorney Vicki H. Young, submits this sentencing memorandum to urge this court to impose the fifteen month custodial sentence recommended by the U.S. Probation Department. Since Mr. Clark has been in federal custody since December 5, 2006, such a sentence would result in no further custody, with three years of supervised release to follow.

Some factors that should be considered in determining the appropriate sentence include Mr. Clark's youth (age 18) at the time of the offense, the fact that Anthony did not intend to, nor did he, personally "profit" from the DDOS, and the lengthy delays caused by the prosecution – delays in eventually filing the case, delays in acquiring needed "loss" information, the last minute government sentencing memorandum filed on August 9, 2007, which recommended a 57 month sentence relying on the June 23, 2006, letter from eBay reporting a loss in excess of

1 \$1,000,000, another six month delay to investigate the eBay claim, and the subsequent
2 recognition that the government could not prove that Anthony Clark was responsible for the
3 massive attack on eBay on July 30, 2003, but rather two smaller attacks in August 2003.

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5 Background

6 Anthony Scott Clark had just graduated from high school in the spring 2003. That
7 summer, he and others were able to exploit a “flaw” in the Windows operating system which
8 allowed them to create the bot net. (It should be noted that there were a number of computer
9 “intrusions” which occurred that summer because of this flaw.)

10 The federal agents served the search warrant on the Clark residence on September 26,
11 2003. Anthony immediately provided a written statement setting forth his role in the offense.
12 The Federal Public Defenders Office for the District of Oregon was appointed to represent Mr.
13 Clark on a “pre-charge” basis. AUSA Chris Sonderby told AFPD Steve Sady in 2003 and 2004
14 that he was attempting to get loss figures and supporting documents from eBay. Nothing was
15 ever provided to the counsel in Oregon. As it turns out, nothing was ever received regarding a
16 purported “loss” figure until late June 2007, almost four years after the incident.

17 Vicki H. Young was appointed on a “pre-charge” basis to represent Anthony Clark in
18 2005 because the U.S. Attorneys Office for the Northern District of California would not agree
19 to Rule 20 Mr. Clark’s case to Oregon. The matter was finally calendared for arraignment and
20 plea in December 2005. Because we had still not received any “loss” documents from the
21 government, the plea agreement set forth a “range” of possible “loss.”

22 Despite his youth and lack of a college degree, Mr. Clark secured employment in the
23 computer field. By November 2005, Mr. Clark had been working for over a year at Wholesale
24 Merchant Services. His employer thought well of him, and wrote a letter for the court in
25 December 2005, requesting that he be allowed to continue working with computers. Although
26 he was working full time, Anthony was not able to make any plans for the future because he
27 never knew what would happen with this case. The uncertainty caused a lot of stress in his life.

1 We are not asking that this Court overlook his drug abuse and pretrial release violations.
2 Nevertheless, it is clear that Anthony Clark has matured greatly from the kid who created a bot
3 net.

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5 Procedural History

6 Anthony Scott Clark pleaded guilty to information CR 05-00789 JW on December 27,
7 2005. On April 2, 2006, the matter was deemed ready for sentencing and sentencing was set for
8 October 16, 2006. On August 29, 2006, the parties stipulated to continue the sentencing to
9 December 11, 2006, because “defense counsel needed additional time to investigate issues
10 regarding the alleged loss.” The reason defense counsel needed to additional time to investigate
11 was because the prosecution had not provided any documentation regarding any alleged loss.

12 Anthony Clark was arrested in the District of Oregon on a warrant for violation of
13 conditions of pretrial release on December 5, 2006. Mr. Clark appeared in this District on
14 January 22, 2007, having been transferred from the District of Oregon. Sentencing was then set
15 for March 26, 2007. The sentencing date was later continued to April 23, 2007, to accommodate
16 an interview of the defendant by the probation officer.

17 On April 23, 2007, the prosecution prepared a stipulation to continue the sentencing
18 because the United States needs additional time to obtain documentation relevant to the
19 sentencing in this matter and to provide such documentation to the probation officer, who will
20 need additional time to prepare the presentence report. The sentencing was then continued to
21 June 18, 2007.

22 On June 18, 2007, the parties appeared before this Court. The government had still not
23 provided any documentation regarding any alleged losses. The sentencing was continued to
24 August 13, 2007, to allow probation to finalize the probation report and for the Government to
25 disclose any information to the defense counsel re probable victim loss.

26 On or about July 5, 2007, the Government finally disclosed a letter from eBay dated June
27 23, 2007, setting forth its purported losses. The government then filed a sentencing
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1 memorandum adopting those loss figures and recommending a sentence of 57 months. On
2 August 13, 2007, Mr. Clark's sentencing was continued to December 3, 2007, to allow defense
3 counsel time to investigate the new loss information from eBay.

4 On August 29, 2007, defense counsel wrote a letter requesting additional discovery
5 pertinent to the loss calculation. AUSA Matthew Lamberti did not respond to the letter for two
6 months. AUSA Lamberti then left the office and the matter was transferred to AUSA Hanley
7 Chew in early November 2007. AUSA Chew immediately contacted defense counsel, and began
8 to locate the requested information. eBay provided an additional letter on December 12, 2007,
9 which clarified that most of the "loss" occurred during an attack which occurred on July 30,
10 2003. Defense counsel specifically questioned whether it could be proven by clear and
11 convincing evidence that Anthony Clark was responsible for the July 30, 2003, attack that
12 caused the massive damage. On January 18, 2008, AUSA Chew advised counsel that the U.S.
13 Attorneys Office was now going to adopt the lower loss figure attributable to the two August
14 2003 ddos attacks.

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16 Request for Forthwith Release Pending Calculation of Good Time Credits

17 Anthony Clark has been in federal custody since December 5, 2006. As of January 28,
18 2008, he will have been in custody for 13 months and 24 days. The probation department has
19 recommended that this court impose a sentence of 15 months. According to the Good Time
20 Chart in the Matthew Bender Federal Sentencing Manual, a defendant sentenced to term of 15
21 months would receive 59 days good time credit and would serve a sentence of 13 months and 2
22 days, three weeks less than Mr. Clark has already served.

23 Defense counsel has checked with the U.S. Marshal's Office regarding the calculation of
24 good time credit. The good time credit cannot be calculated by the Bureau of Prisons until the
25 Judgment and Commitment Order has been prepared. The J & C then has to be faxed by the
26 U.S. Marshals Office to the central office in Texas for the calculation. Once the calculation is
27 done, the information is sent back to the U.S. Marshals in San Jose. The U.S. Marshals Office
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1 will only release Mr. Clark from custody after they have received the calculation from the
2 Bureau of Prisons.

3 Anthony Clark has already served the time for his crime, and it is time that he begin
4 rebuilding his life. Mr. Clark's mother is flying from Portland, Oregon, to attend Anthony
5 Clark's sentencing. She is bringing his identification documents with him so that he will be able
6 to fly back to Portland. If this court releases Anthony Clark on his own recognizance forthwith,
7 he will be released from jail later in the day and would be able to return to Portland, Oregon with
8 his mother. He would then report as directed to the Probation Department in Oregon.

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10 Conclusion

11 For the reasons set forth above, this Court should follow the recommendation of the
12 United States Probation Department and sentence Anthony Scott Clark to a custodial term of
13 fifteen months. Anthony Clark should be released on his own recognizance forthwith pending
14 calculation of good time credit by the Bureau of Prisons.

15 Dated: January 24, 2008

Respectfully submitted,

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17 /s/ Vicki H. Young
18 Vicki H. Young
19 Counsel for Anthony Scott Clark
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